



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 31, 1999

Susan Limon, Treasurer
Tenet Healthcare Corporation
Political Action Committee
3820 State St.
Santa Barbara, CA 93105

RE: MUR 4886

Dear Ms. Limon:

On March 23, 1999, the Federal Election Commission found that there is reason to believe Tenet Healthcare Corporation Political Action Committee and you, as treasurer, violated 2 U.S.C. § 432(b)(2)(B), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Thomas Andersen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Factual and Legal Analysis

Procedures

Designation of Counsel Form

Conciliation Agreement

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 4886

RESPONDENTS: Tenet Healthcare Corporation Political Action Committee
and Susan Limon, as treasurer

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

Pursuant to the Federal Election Campaign Act of 1971, as amended ("Act"), every person who receives a contribution for a political committee which is not an authorized political committee shall, if the amount of the contribution is in excess of \$50, forward to the treasurer the contribution, the name and address of the person making the contribution, and the date of receipt of the contribution, no later than 10 days after receiving it. 2 U.S.C. § 432(b)(2)(B); 11 C.F.R. § 102.8(b)(2). If the amount of the contribution is in excess of \$200, the person forwarding the contribution shall identify the contributor's occupation and employer. *Id.*; 11 C.F.R. § 100.12. All recipient political committees shall disclose, for the appropriate reporting period, any contribution in excess of \$200, including the amount, date of receipt, donor's name, address, occupation and employer. 2 U.S.C. § 434(b); 11 C.F.R. § 102.9(a)(1).

The Act provides that all contributions by a person made on behalf of or to a candidate, including contributions which are in any way *earmarked or otherwise directed to the candidate*

through an intermediary or conduit, are contributions from the person to the candidate. 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 110.6(a). “Earmarked” means a “designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate’s authorized committee.” 11 C.F.R. § 110.6(b)(1). A “conduit or intermediary” is any person, with certain exceptions, who forwards an earmarked contribution to a candidate or a candidate’s authorized committee. 11 C.F.R. § 110.6(b)(2). Section 110.6(c) imposes certain reporting obligations on the conduit or intermediary and on the recipient committee with regard to earmarked contributions.

B. Factual Background

Tenet Healthcare Corporation Political Action Committee (“TenetPAC”) is a qualified multicandidate committee and the separate segregated fund (“SSF”) of Tenet Healthcare Corporation, a nationwide provider of health care services.¹ Tenet Healthcare is a member of the Federation of American Health Systems (“Federation”), a non-profit, incorporated national trade organization that represents nearly 1,700 owned and managed hospitals and health care systems. The Federation of American Health Systems Political Action Committee (“FedPAC”)

¹ According to its website, Tenet Healthcare owns or operates 128 acute care hospitals and related businesses in 18 states through its subsidiaries. Tenet Healthcare is headquartered in Santa Barbara, CA, and employs approximately 130,000 people nationwide. <<http://www.tenethealth.com>> (accessed Jan. 5, 1999). A recent Dun & Bradstreet search revealed that Tenet Healthcare is the second largest investor-owned healthcare services company in the United States.

is the Federation's SSF and a qualified multicandidate committee.²

In Schedule B of its 1997 Year End Report, TenetPAC disclosed a \$5,000 contribution on October 23, 1997 and a \$35,350 contribution on December 22, 1997, to FedPAC. The latter contribution was described as "FedPAC – Earmarked Contributions solicited through TenetPAC." In Schedule A of its Report, TenetPAC disclosed contributions received from 29 executives of Tenet Healthcare. These contributions, ranging from \$500 to \$3,000 and totaling \$36,600, were each described as "earmarked for FedPAC." FedPAC, in its 1997 December and Year End Reports, disclosed a \$5,000 contribution from TenetPAC as being received on November 13, 1997, and a \$35,350 contribution from TenetPAC on December 31, 1997.³ FedPAC did not provide any further description or itemization of the \$35,350 contribution.

On February 18, 1998, the Reports Analysis Division ("RAD") sent a Request for Additional Information ("RFAI") to FedPAC regarding its 1997 Year End Report, notifying the committee that it had received an excessive contribution. The RFAI advised FedPAC to clarify if the contribution was incorrectly disclosed, and to transfer out or refund the amount in excess of \$5,000. By letter dated February 24, 1998, FedPAC responded that it had "miscategorized" the

² In its website, the Federation states that the purpose of FedPAC

is to support the election to Congress of candidates who understand the contributions of privately owned community hospitals and health systems and support a market driven approach to the nation's health care delivery system. FedPAC supports candidates interested in legislation that ensures that the private sector continues its essential role in providing quality care to the American people.

<http://www.fahs.com/public/publications/a_rep/about/html> (accessed Jan. 5, 1999).

³ There is a \$1,250 discrepancy between the \$35,350 contribution to FedPAC reported by TenetPAC and the sum of the individual contributions received by TenetPAC (\$36,600). This discrepancy appears to have resulted from two contributions received by TenetPAC during the reporting period (\$500 from Anthony P. Whitehead on December 23, 1997, and \$750 from Michael W. Gallo on December 29, 1997), but forwarded to FedPAC in January 1998.

\$35,350 contribution as having been received directly from TenetPAC, when in fact it consisted of "individual contributions sent to TenetPAC but which were earmarked for FedPAC."

FedPAC contended that the "retribution rules contained in 11 C.F.R. § 110.1(k) permit these contributions to be treated as if they had been made directly to FedPAC." The response included a list of the original 27 donors and the amount of their "earmarked" contributions.

On February 25, 1998, the RAD sent an RFAI to TenetPAC regarding its 1997 Year End Report, stating that TenetPAC had made contributions to FedPAC in excess of \$5,000 per calendar year. The RFAI recommended that TenetPAC clarify if the contributions were incorrectly disclosed, or notify the recipient and request a refund of the amount in excess of \$5,000. On March 5, 1998, TenetPAC responded that it had been "'earmarking' contributions to FedPAC for a number of years. Prior to TenetPAC beginning this 'earmarking,' we spoke with someone from the . . . Commission to ensure that it was being done properly and legally." On March 16, 1998, Charles H. Bell, Jr., an attorney responding via facsimile on behalf of TenetPAC, stated that TenetPAC "had responded to a similar inquiry [in 1997] and had received no response indicating that the explanation given was inadequate, and had, justifiably, believed that response and explanation had been accepted." Attached to the letter was the same list of 27 donors submitted by FedPAC on February 24, 1998.

On April 17, 1998, a Second Notice was sent to FedPAC advising it to specify the method used by TenetPAC to solicit the contributions and to include a copy of the original solicitation. On April 23, 1998, Tom Scully, President and CEO of the Federation, called RAD and stated that the Federation is a trade group made up of corporations, some of which have their own SSFs. The SSFs receive funds from individuals, but may verbally suggest that the contributors can make contributions to FedPAC, either directly or through the SSF. On May 4,

1998, FedPAC submitted a written response mistakenly stating that a \$35,700 contribution disclosed on its 1997 December Monthly Report was received in the form of a single check from TenetPAC, consisting of amounts collected by TenetPAC from "senior employees at Tenet Healthcare who had chosen to earmark them" for FedPAC.⁴ FedPAC's amended 1997 December Monthly Report, received on May 4, 1998, showed \$35,350 in contributions from Tenet Healthcare executives.

On May 6, 1998, two analysts from RAD met with Mr. Scully to discuss the contributions at issue. Mr. Scully provided copies of some checks from Tenet Healthcare executives to TenetPAC, which represented contributions "earmarked" for FedPAC. The checks contain notations such as "[m]ay be earmarked for FedPAC." Mr. Scully explained that Tenet Healthcare did not allow FedPAC to solicit its executives directly. Instead, Tenet Healthcare agreed to solicit its members on behalf of FedPAC in order to reach an annual contribution goal of \$35,000. Mr. Scully further explained that he informs the board of directors of a member corporation that FedPAC needs money and that it is time to meet the contribution goal arranged by FedPAC and the corporation. The RAD analysts reiterated the need to clarify TenetPAC's solicitation method, preferably including a copy of the solicitation.

On May 20, 1998, Mr. Bell submitted a response on behalf of TenetPAC which confirmed that the \$35,350 contribution was sent by TenetPAC to FedPAC in the form of a single check from TenetPAC. Attached to the response was a "boilerplate version of the TenetPAC solicitation that was sent to [Tenet Healthcare] employees" from Michael H. Focht,

⁴ FedPAC's original 1997 December Monthly Report showed no such contribution; the contribution referred to would appear to be the \$35,350 receipt from TenetPAC disclosed in FedPAC's 1997 Year End Report, which covered activity occurring in December 1997.

President of Tenet Healthcare. On June 22, 1998, FedPAC submitted an amended 1997 Year End Report showing the receipt of \$35,350 from TenetPAC and listing, as memo entries, 27 individual contributions comprising that amount. The individuals involved were the same Tenet Healthcare executives identified as donors in FedPAC's response to RAD's February 24, 1998 RFAI.

C. Analysis

Although the contributions at issue were reported as being "earmarked" by Tenet Healthcare executives to FedPAC, the earmarking provisions of the Act and Commission regulations described above refer only to contributions made "either directly or indirectly on behalf of a particular candidate" 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 110.6(b)(1).⁵ The Act and regulations do not specifically address contributions "earmarked" for political committees that are not authorized committees of candidates. However, the Commission has held that this omission does not bar such contributions, so long as they are properly forwarded to the designated political committee donee.⁶ AOs 1981-57 and 1983-18. Because all the contributions at issue were greater than \$50, TenetPAC was required to forward them to FedPAC within 10 days, along with the required recordkeeping information. 2 U.S.C. § 432(b)(2)(B); 11 C.F.R. § 102.8(b)(2). TenetPAC's disclosure reports indicate that the following contributions were not timely forwarded to FedPAC:

⁵ Other sections of the regulations that discuss earmarked contributions also specifically refer to such contributions as being earmarked *for a candidate*. See, e.g., 11 C.F.R. §§ 110.5(c)(3)(ii), 114.2(f)(2)(iii), (3)(ii) and (4)(iii).

⁶ If designated contributions are deposited in the forwarding committee's bank account, they must be reported as receipts and disbursements with an accompanying explanation, as it appears TenetPAC has done. See AOs 1981-57 fn. 3 and 1983-18 fn. 2.

Contributor	Amount	Date received by TenetPAC	Date forwarded to FedPAC	Days late
Jeffrey C. Barbakow	\$3,000	11/13/97	12/22/97	29
Jim Biltz	\$1,500	11/13/97	12/22/97	29
Steven Blake	\$500	11/18/97	12/22/97	24
Norman S. Bobes	\$1,500	11/13/97	12/22/97	29
Scott Brown	\$1,500	11/21/97	12/22/97	21
Stephen Brown	\$1,500	11/17/97	12/22/97	25
Thomas Casaday	\$750	12/01/97	12/22/97	11
David Dearman	\$500	11/19/97	12/22/97	23
Alan Ewalt	\$1,500	11/07/97	12/22/97	35
Michael Focht, Sr.	\$3,000	12/05/97	12/22/97	7
Douglas Fritsche	\$500	11/19/97	12/22/97	23
Reynold J. Jennings	\$1,500	11/17/97	12/22/97	25
Dennis Jorgensen	\$1,500	11/13/97	12/22/97	29
Ben King	\$750	11/17/97	12/22/97	25
Kenneth B. Love, Jr.	\$500	11/19/97	12/22/97	23
William M. Murray	\$1,600	11/17/97	12/22/97	25
Karen S. Poole	\$750	11/17/97	12/22/97	25
Scott Richardson	\$500	12/05/97	12/22/97	7
Neil Sorrentino	\$1,500	11/10/97	12/22/97	32
Don S. Steigman	\$1,500	11/07/97	12/22/97	35
Ed Tudanger	\$1,000	11/19/97	12/22/97	23
Michael Tyson	\$500	12/01/97	12/22/97	11
Kenneth K. Westbrook	\$750	12/01/97	12/22/97	11
Barry Wolfman	\$750	11/21/97	12/22/97	21
TOTAL:	\$28,850			

Therefore, there is reason to believe that Tenet Healthcare Corporation Political Action Committee and Susan Limon, as treasurer, violated 2 U.S.C. § 432(b)(2)(B).